

If it were shown that the bill had been delivered for a considerable time, and had never been objected to by the person to whom it had been delivered; and if the bill on the face of it seemed to be fair and reasonable, a jury would no doubt be told that, in the absence of anything to the contrary, it was conclusive against the person charged and that they ought in such a case to find a verdict for the plaintiff. Applying that to the case of a solicitor's bill, if such a bill had been delivered for more than a year, and the person to whom it was delivered has never sought to have it referred to taxation, or made any objection to it, and the bill on the face of it appears to be a reasonable bill, and contains no extraordinary charges, then it would seem a very reasonable thing that the jury should be told that the defendant in the action ought not now to be allowed to question the bill if he has nothing to allege against it, and that as against him a verdict should go for the plaintiff for the amount of such reasonable bill.

...

[And at p 335] The Lord Justice, therefore, seems to have been of opinion, in entire agreement with the common law authorities, that if the client does not object to the bill, and makes no effort to get it taxed, but allows a long time to elapse — a fortiori, if he makes a payment on account — those are very strong circumstances against him, and without further explanation would probably be held conclusive against him.

In the present case, the respondent deposed in his affidavit (encl 3A) that it was agreed by the petitioner that the fees be fixed at \$16,342.81 exclusive of disbursements. He confirmed by his letter of 23 July 1987 (see exh 'A' to encl 3A). In the same letter, he also confirmed that the petitioner had already paid the respondent a sum of \$10,000 towards settlement of the said fees leaving a balance of \$6,342.81. The petitioner had not categorically denied or objected to the contents of the said letter and in particular with regard to the part-payment in the sum of \$10,000 paid by the petitioner to the respondent. On the other hand, after one year and nine months, the petitioner filed the present petition. The respondent wrote again on 9 February 1988 and this time to the petitioner's counsel and by that time the petitioner had almost settled the bill leaving only a balance of \$2,843.81 and disbursements of \$387.10. The said letter was in fact the final letter of demand for full settlement of the bill. Also at no time before this, had the petitioner shown that the bill had been unfair and unreasonable. The judgment was obtained on 15 May 1987 in the sum of \$120,742.45. Neither had the petitioner explained why the petition was filed only after more than a year. In the *Haw Par Brothers* case,¹ the defendant's bills of costs were also not itemized and were in lump sums. The plaintiff company immediately considered it was grossly overcharged and also several attempts were made to arrive at a mutually agreeable settlement but failed. That is however not the case in our instant case. Out of \$16,342.81, only \$2,843.81 was left unpaid. There had been no objection or protest. At no time was there a complaint that it was overcharged. I think that it is too late in the day to complain that the lump sum bills

A were not contained in a written agreement as required by the Legal Profession Act 1976. In the circumstances, I dismissed the petition with costs.

Petition dismissed.

Solicitors: *Siva, Ram & Associates; Malek & Joseph Au.*

B

Reported by *Yap Shao Sin*

C

Toh Kong Joo v Penguasa Perubatan Hospital Sultanah Aminah, Johore Bahru

D

HIGH COURT (JOHORE BAHRU) — CRIMINAL
MISCELLANEOUS APPLICATION NO 54-6 OF 1987
ZAKARIA YATIM J
11 FEBRUARY 1990

Evidence — Public documents — Whether medical report a public document — Right to inspect public document — Evidence Act 1950, ss 74 & 76

E

Public Authorities — Medical officers — Whether public servants

The applicant was arrested by the Johore Bahru police and while under police custody, he was interrogated and subjected to beatings. He was sent to Hospital Sultanah Aminah for treatment. His solicitors wrote to the hospital for a copy of the medical report pertaining to his medical examination and treatment. The hospital replied that according to a Ministry of Health circular, the applicant was required to get prior permission of the police in writing before the medical report could be issued to him. The applicant applied for, inter alia, a declaration that the medical report is a public document. The issue for the court is whether para 4 of the circular, being only an administrative guideline, reflects the provisions of existing law.

G

Held, allowing the application:

(1) The medical report in question is a public document. Medical officers are members of the public service and under s 74 of the Evidence Act 1950, public documents are documents forming the acts or records of the acts of public officers.

H

(2) It is clear from s 76 of the Evidence Act 1950 that if a person has the right to inspect a document, then he should be supplied with a copy of the document on payment of the prescribed fee. A person has the right to inspect a document if he has an interest in that document and the inspection is necessary for the protection of his own interest.

I

(3) In the present case, the applicant definitely has an interest in his own medical report and it is obvious that he needs a copy of the report to protect his own interest, especially when he has alleged that he was beaten by the police. In the circumstances, he is entitled to be supplied with a copy without any prior written approval from the police. The medical officer is obliged to supply a copy of the report on payment of the prescribed fee.

Cases referred to

- 1 *Anthony Gomez v Ketua Polis Daerah Kuantan* [1977] 2 MLJ 24 (folld)
- 2 *Khoo Siew Bee & Anor v Ketua Polis, Kuala Lumpur* [1979] 2 MLJ 49 (folld)

Legislation referred to

Evidence Act 1950 ss 74, 76
Federal Constitution art 132(1)
Medical Act 1971 s 36

RK Menon for the applicant.

Kamarulzaman bin Abdul Jalil (Deputy Public Prosecutor)
for the respondent.

Cur Adv Vult C

Zakaria Yatim J: In this notice of motion, the applicant, one Toh Kong Joo is seeking the order of the court:

- (i) for a declaration that the medical report on the applicant Toh Kong Joo (NRIC No 5692047) bearing reference HSA/LP/1364/87 is a public document;
- (ii) for a declaration that the applicant, the said Toh Kong Joo, to whom such said medical report relates, has a right to purchase a copy of the said medical report on payment of the prescribed fee;
- (iii) that the applicant, the said Toh Kong Joo, be furnished with a copy of his medical report prepared by the Hospital Sultanah Aminah, Johore Bahru, upon payment of the prescribed fee; and
- (iv) that the costs of his application be paid by the respondent to him.

In his affidavit in support of the notice of motion, he stated that he was arrested by the Johore Bahru police and remanded in police custody. While he was in police custody, he was interrogated by the police. He was accused of being involved in cases of thefts of motorcars. He denied the allegation and he was subjected to beatings. According to him, he suffered injuries as a result of being beaten by the police while in custody. He was then sent to Hospital Sultanah Aminah for treatment.

Subsequently, he was brought to the Johore Bahru magistrate's court where he was charged with two charges. No particulars of the charges were mentioned in the affidavit. The applicant claimed trial to the two charges and the court released him on bail pending his trial.

On his instruction, his solicitors wrote to Hospital Sultanah Aminah for a copy of the medical report pertaining to his medical examination and treatment. After a series of correspondence, the applicant's solicitors received a letter from the medical superintendent of the hospital. The letter dated 19 October 1987, referred to a circular letter dated 11 June 1987 issued by the Ministry of Health, and stated that according to the circular letter, the applicant was required to get the prior permission of the police in writing before the medical report could be

A issued to him. The relevant part of the circular is quoted below:

4 Kes-kes polis yang berupa jenayah

4.1 Laporan-laporan perubatan bagi kes-kes jenayah yang dirujuk oleh pihak-pihak polis seperti pembunuhan, luka akibat tembakan, rogol dan lain-lain hanya boleh dikeluarkan kepada pegawai polis yang menjalankan penyiasatan ke atas kes itu sahaja. Ini adalah untuk membolehkan pegawai polis menjalankan siasatan mereka dan bagi mengelakkan sebarang kejadian memalsukan kenyataan-kenyataan yang diperlukan oleh pihak polis.

4.2 Mana-mana pihak, termasuk pesakit, yang memohon untuk mendapatkan laporan-laporan tersebut hendaklah dinasihatkan untuk mendapatkannya daripada pihak polis. Walaubagaimanapun, pengarah hospital, penguasa perubatan dan pegawai perubatan y/m hospital boleh mengeluarkan laporan perubatan kepada lain-lain pihak jika pihak polis memberi kebenaran bertulis.

D The applicant, through his solicitors, referred the matter to the Director-General of Health, Malaysia in Kuala Lumpur. In his reply dated 16 June 1988, the Director-General explained that the circular letter was only an administrative guideline for his own medical officers.

E It is clear that the circular letter is not a subsidiary legislation made under the provisions of the Medical Act 1971. Indeed the Director-General has no power to make rules or regulations under the Act. Under s 36 of the Act, only the Medical Council may, with the approval of the minister, make regulations in respect of matters listed in sub-s (2) of that section.

F Since the circular letter is not a subsidiary legislation and since it is only a guideline, the medical officer at Hospital Sultanah Aminah is not bound by the circular letter unless the circular letter repeats the provisions of any existing law. But if the circular letter is in the form of administrative *directive*, the medical officer has to comply with the directive otherwise disciplinary action can be taken against him.

H The question that arises here is whether para 4 of the circular letter quoted above reflects the provisions of existing law? In my opinion a medical officer has to comply with para 4.1 because the medical reports form part of the police investigation in respect of criminal offences. An accused person will be supplied with a copy of the medical report if the prosecution intends to use it. Under s 399 of the Criminal Procedure Code (FMS Cap 6), if the public prosecutor intends to give in evidence such report, he shall deliver a copy of the report to an accused person not less than ten clear days before the commencement of the trial. Paragraph 4.2 of the circular letter is more general in nature. The question is whether it is required by law that the applicant must obtain the prior permission of the police before he can be supplied with a copy of the medical report?

The medical report in question is a public document. Section 74 of the Evidence Act 1950 provides that public documents are documents forming the acts or records of the acts of '... public officers, legislative, judicial and executive, whether Federal or state'. A 'public officer' is defined in the Interpretation Act 1967 as a person lawfully holding, acting in or exercising the functions of a public office; and 'public office' is defined in the same Act as an office in any of the public services. The public services are enumerated in art 132(1) of the Federal Constitution and includes the general public service of the Federation. The medical service is not expressly provided in art 132, but members of the medical service form part of the general public service and come under the jurisdiction of the Public Services Commission. See Tun Mohamed Suffian bin Hashim, *An Introduction to the Constitution of Malaysia* (2nd Ed) at p 133.

Since medical officers are members of the public service, they are therefore public officers and the reports of their medical examinations are public documents. Although medical reports are public documents, not every person has access to it or has the right to ask for copies of the documents. Section 76 of the Evidence Act 1950 states:

Every public officer having the custody of a public document which any person has a right to inspect shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate, written at the foot of the copy of the document or part thereof, as the case may be, and the certificate shall be dated and subscribed by the officer with his name and his official title, and shall be sealed whenever the officer is authorized by law to make use of a seal, and the copies so certified shall be called certified copies. (Emphasis added.)

It is clear from the section quoted above that if a person has the right to inspect a document, then he should be supplied with a copy of the document on payment of the prescribed fee. A person has the right to inspect a document if he has an interest in that document and the inspection is necessary for the protection of his own interest. See *Anthony Gomez v Ketua Polis Daerah Kuantan*¹ and *Khoo Siew Bee & Anor v Ketua Polis, Kuala Lumpur*.²

In the present case, the applicant definitely has an interest in his own medical report and it is obvious that he needs a copy of the report to protect his own interest especially when he has made the allegation that he was beaten by the police. In the circumstances, he is entitled to be supplied with a copy of his medical report without any prior written approval from the police. The medical officer concerned or Hospital Sultanah Aminah is obliged to supply a copy of the report as requested by the applicant on payment of the prescribed fee.

For the reasons stated above, I make the following order:

- A (1) The medical report pertaining to the examination of the applicant is a public document.
(2) The applicant is entitled to purchase a copy of the said medical report on payment of the prescribed fee.
(3) Hospital Sultanah Aminah, Johore Bahru shall supply a copy of the said report to the applicant or his solicitors upon payment of the prescribed fee.

B

I order that the costs of this application be costs in the cause.

Application allowed.

C Solicitors: *RK Menon & Co.*

Reported by *Zarinah Marican*

D

Re Loh Kah Kheng (deceased) (No 2)

HIGH COURT (PENANG) — INQUIRY NO 98-96-87
MOHAMED DZAIDDIN J
2 FEBRUARY 1990

E

Criminal Procedure — Inquiry into death — Duty of magistrate — Whether strict rules of evidence apply — Evidence Act 1950, s 122

This is a revision as to the correctness, legality, or propriety of the magistrate's decision on the applicability of s 122 of the Evidence Act 1950 to the inquiry into the death of one Loh Kah Kheng. The issue before the court was whether by virtue of that section, the learned magistrate should have prohibited the deceased's widow from disclosing communications made to her by the deceased during the marriage. The magistrate had ruled that the section did not apply to the inquiry.

F

Held, affirming the magistrate's ruling:

G

(1) The rules of evidence still apply in a magistrate's inquiry under Chapter XXXII of the Criminal Procedure Code but the magistrate is not bound to follow it strictly.

(2) The magistrate's primary function at an inquiry into death is to ascertain the cause of death and where there is a suggestion that the deceased could have died as a result of suicide, the magistrate should be given greater latitude to hear any evidence, including that of the widow of the deceased, in order to arrive at a verdict. She could therefore admit any evidence which she thought fit in the circumstances.

H

[*Editorial Note:* An appeal to the Supreme Court has been filed on behalf of Tan Sri Loh Boon Siew and the widow vide Criminal Appeal No 07-7-90.]

I

Cases referred to

- 1 *Nawab Howlander v R* (1914) IC Vol XXXIII 511 (refd)
2 *R v Divine* [1930] All ER 302 (foldd)

Legislation referred to

Evidence Act 1950, s 122
Criminal Procedure Code (FMS Cap (6) ss 327, 328